Appendix B: Model Bill Language for Credit Programs

Sec. 1 Title

A Bill

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That, this Act may be cited as " ."

Sec. 2 Authorization

(a) The Administrator is authorized to make or guarantee loans to... [Define eligible applicants].

(b) There are authorized to be appropriated $_____ for the cost of direct loans or loan guarantees authorized in subsection (1) and $_____ for administrative expenses for fiscal year _____ and such sums as shall be necessary for each fiscal year thereafter. [The amounts authorized must be consistent with the amounts proposed in the President's budget for that fiscal year. Generally, a specific amount should be specified for the first fiscal year and sums for subsequent fiscal years (see OMB Circular No. A-19.)]

(c) Within the resources and authority available, gross obligations for the principal amount of direct loans offered by the Administrator will not exceed $_____, or the amount specified in appropriations acts for fiscal year _____ and such sums as shall be necessary for each fiscal year thereafter. Commitments to guarantee loans may be made by the Administrator only to the extent that the total loan principal, any part of which is guaranteed, will not exceed $_____, or the amount specified in appropriations acts for fiscal year _____ and such sums as shall be necessary for each fiscal year thereafter.

Sec. 3 Terms and Conditions

Loans made or guaranteed under this Act will be on such terms and conditions as the Administrator may prescribe, except that:

(a) The Administrator will allow credit to any prospective borrower only when it is necessary to alleviate a credit market imperfection, or when it is necessary to achieve specified Federal objectives by providing a credit subsidy and a credit subsidy is the most efficient way to meet those objectives on a borrower-by-borrower basis.

(b) The final maturity of loans made or guaranteed within a period shall not exceed _____ years, or _____ percent of the useful life of any physical asset to be financed by the loan, whichever is less as determined by the Administrator.

(c) No loan guaranteed to any one borrower will exceed 80 percent of the loss on the loan. Borrowers who are deemed to pose less of a risk will receive a lower guarantee as a percentage of the loan amount.

(d) No loan made or guaranteed will be subordinated to another debt contracted by the borrower or to any other claims against the borrowers in the case of default.

(e) No loan will be guaranteed unless the Administrator determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

(f) No loan will be guaranteed if the income from such loan is excluded form gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986, as amended, or if the guarantee provides significant collateral or security, as determined by the Administrator, for other obligations the income from which is so excluded.

(g) Direct loans and interest supplements on guaranteed loans will be at an interest rate that is set by reference to a benchmark interest rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed. The minimum interest rate of these loans will be (at) (_____ percent above) (no more than _____ percent below) the interest rate of the benchmark financial instrument.

(h) The minimum interest rate of new loans will be adjusted every quarter (month(s)) (weeks) (days) to take account of changes in the interest rate of the benchmark financial instrument.

(i) Fees or premiums for loan guarantee or insurance coverage will be set at levels that minimize the cost to the Government (as defined in Section 502 of the Federal Credit Reform Act of 1990, as amended) of such coverage, while supporting achievement of

the program's objectives. The minimum guarantee fee or insurance premium will be (at) (no more than _____ percent below) the level sufficient to cover the agency's costs for paying all of the estimated costs to the Government of the expected default claims and other obligations. Loan guarantee fees will be reviewed every _____ month(s) to ensure that the fees assessed on new loan guarantees are at a level sufficient to cover the referenced percentage of the agency's most recent estimates of its costs.

(j) Any guarantee will be conclusive evidence that said guarantee has been properly obtained; that the underlying loan qualified for such guarantee; and that, but for fraud or material misrepresentation by the holder, such guarantee will be presumed to be valid, legal, and enforceable.

(k) The Administrator will prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans. The Administrator must find that there is a reasonable assurance of repayment before extending credit assistance.

(l) New direct loans may not be obligated and new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in Section 504 of the Federal Credit Reform Act of 1990, as amended.

Sec. 4 Payment of Losses

(a) If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Administrator may require, the Administrator determines that the holder has suffered a loss, the Administrator will pay to such holder _____ percent of such loss, as specified in the guarantee contract. Upon making any such payment, the Administrator will be subrogated to all the rights of the recipient of the payment. The Administrator will be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this Act.

(b) The Attorney General will take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this Act.

(c) Nothing in this section will be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Administrator, provided that budget authority for any resulting subsidy costs as defined under the Federal Credit Reform Act of 1990, as amended, is available.

(d) Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Administrator will have the right in his discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by him pursuant to the provisions of this Act.